Permanent Disability Evaluation

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• Physicians' reports for the purpose of permanent disability rating differ in character and in scope from usual clinical reports. Complete and precise reporting of permanent disability factors by physicians aids the Industrial Accident Commission in making proper awards for permanently disabled workmen.

The use of a CMA-approved method of reporting permanent disability factors reduces misunderstanding and needless delay in adjustment of cases.

THIS YEAR MARKS the fortieth anniversary of the California system of permanent disability evaluation of the Industrial Accident Commission and, generally, of the Workmen's Compensation Law as it stands today. This would therefore seem an appropriate time to review the basic principles of the California system, so that you the attending, treating and examining physicians of the state, and we of the Commission, might view the problem of permanent disability through the same eyes and thereby might better serve the people of California in our joint tasks.

First of all, it must be remembered that the concept of damages is alien to any consideration of workmen's compensation benefits. It was the inability of the damage system to cope with the problem of the industrially injured workman that led to the development of workmen's compensation. The purpose of the law is not to indemnify an injured employee for the consequences of injury, but merely to provide assistance to him during his period of disability. While it is a fundamental principle of workmen's compensation that industry should take care of its own, an injured employee must still bear some of the burden resulting from his injury.

Many methods have been developed for compensating permanent disability in the years that have elapsed since the first workmen's compensation principles were conceived. The founding fathers of workmen's compensation in California studied other existing methods and found them wanting.

One theory, that payment should continue indefinitely solely upon a percentage of actual wage loss following injury, was not accepted. Influences independent of the disability itself (such as, for instance, economic cycles, good times and bad) and individual factors (such as opportunity for obtaining employment because of friends or relatives, or, on the other hand an unwillingness to seek reemployment) quickly beclouded the effects of the disability itself. The necessity for making allowances for these extraneous factors and the necessity for following every case for years would have presented administrative problems of considerable magnitude.

Use of the so-called flat rate schedule composed of a relatively short list of disabilities and providing a specified amount of money or number of weeks of payments for each disability, left much to be desired. First, the injury list was meager and not detailed, leaving too many nonscheduled disabilities and with but few rules for evaluating them. The important elements of occupation and age were not included for the most part, or, if they were mentioned, no specific method of weighing these factors was indicated.

In 1914, the Commission brought forth a Schedule for Rating Permanent Disabilities. It was unique in character and concept. It demonstrated that the factors of disability, occupation and age could be correlated and scheduled.

The California concept of rating, very briefly, is this: As the member of the body disabled is of relatively greater or less importance in the occupation of the injured employee, the rating is accordingly increased or decreased from the standard. Thus, a structural steel worker would receive a higher rating for disability of a leg than would an office worker with a similar disability.

With reference to the age factor, disability increases with age. Thus, a young man with a given disability would receive a smaller rating than an older man with the same disability, assuming they were both in the same occupation. This is because a younger man has greater adaptability than an older man and usually would adjust more quickly to his handicap than would the more aged employee. Also, it is more difficult for the older man to obtain new employment. To reverse the principle so that disability rating decreases with age on the assumption that the younger man would have to carry his handicap for a longer period of time would be to permit the damage concept to enter into the disability evaluation. The occupation and age features

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do not add to the employer's cost. It simply means a more realistic distribution of compensation benefits.

The 1914 schedule was amended only slightly during the following 35 years. In 1950 a revised schedule became effective embodying the same basic principles as the earlier schedule. The basic ratings for individual disabilities were reexamined and revised. Occupations were regrouped in the light of changing industrial procedures, and the format was changed to afford easier use of the schedule. The adoption of the 1950 schedule followed several years of study of rating procedures throughout the world, and analysis of schedules from all domestic and many foreign jurisdictions. The Commission was fortunate in having available to it Robert E. Haggard, who for over 30 years had been associated with the Rating Bureau, and whose vast experience and knowledge were invaluable to the study.

Briefly, the present schedule contains a list of some 300 disabilities, each with a standard rating bearing a percentage of total permanent disability. The disabilities listed relate to the end result and not to the initial diagnosis. (Loss of motion of a wrist joint is listed, but a Colles fracture is not.) These disabilities are correlated with some 1,800 occupational titles, each of which is assigned to one of 60 occupational groups based upon the similarity of the physical demands of the occupations. A table for the age variant is included.

The percentage ratings specified are considered adequate on the average to compensate for the residual disability resulting from the injury and to afford a reasonable period of adjustment to the effect of such injury.

The California system has not been without criticism from both within and without the state. Most of the criticism is based upon the contention that the schedule is too complex. Other quarters question the validity of scheduling occupation and age. In reply to the first objection, the author would suggest that it is primarily the disability itself that is complex, and not the schedule. The schedule appears complex because it contains either listed disabilities or rules for rating many disabilities which would be nonscheduled under other types of schedules. Frequently those who object to a complex schedule at the same time object to nonscheduled ratings. It is obviously impossible to schedule all conceivable disabilities. Some degree of discretion is inevitable.

With reference to the second objection, it might be observed that it is far better to schedule occupation and age factors than to leave consideration of these elements to persons who have no common meeting ground for appraisal and whose personal views would lead to divergent conclusions.

The Labor Code specifies that four disabilities are conclusively presumed to be total in character. They are: loss of both eyes or the sight thereof, loss of both hands or the use thereof, an injury resulting in a practically total paralysis and an injury to the brain resulting in incurable imbecility or insanity. In all other cases total permanent disability must be determined in accordance with the individual circumstances in each case. The Labor Code further requires that in determining the degree of permanent disability consideration be given to the diminished ability of the injured employee to compete in an open labor market.

It is known from common experience that a blind man or a paraplegic man can earn. Therefore even the statutory total permanent disabilities do not necessarily contemplate that the injured employee is unable to work or is unable to earn money. Under the code it would appear that mere loss of ability to compete in an open labor market with other employees is sufficient to warrant a rating of total permanent disability. The employee need not be helpless and unable to do anything to earn a living.

This brings out the distinction between the purpose of temporary disability payments and of permanent disability payments. Temporary disability payments are based solely upon loss of wages during the healing period. Unless there is actual wage loss, there is no basis for payment of temporary disability, no matter how gravely injured the workman may be or how extensive his injury. The purpose of temporary disability compensation payments is to cushion the effects of actual wage loss incurred by the employee during the period of treatment and healing.

As to permanent disability payments, however, the concept is entirely different. They are based upon a prospective loss or impairment of earning power. This principle was illustrated some years ago by Mr. Gustav Michelbacher, who was chairman of the study which led to the formulation of the 1914 schedule:

"It is a matter of common knowledge that the laborer who, for example, loses one eye, while he may suffer no loss of earning capacity by reason of the physical impairment does suffer a loss in competing power, which is an important factor in determining the effect of this accident upon his future earning capacity. The worker who has lost an eye must compete for the rest of his life with healthy two-eyed workers, and even though he be physically able to perform the work equally as well as before the accident, he will still have difficulty in obtaining a chance to perform work in competition with other workers who are physically perfect."

The greater the permanent disability the longer the payments continue. This affords a longer period of rehabilitation and readjustment for the more serious disabilities, and a shorter period for the less

serious. In this connection Mr. William Leslie, who also participated in the creation of the 1914 schedule, wrote: "It is frequently referred to as the rehabilitation theory and assumes that the permanently injured worker either can or cannot regain his earning capacity. If he cannot, he must be compensated for life. If he can, he must be aided financially during the period of rehabilitation. The period of rehabilitation will on the average vary with the extent of disability."

Once the degree of permanent disability has been determined, payments are made under a formula set forth in the Labor Code, calling for four weeks of compensation payments for each 1 per cent of disability, and further providing that if the disability is 70 per cent or greater, there is in addition provided a life pension at a lower rate than the normal compensation.

In analyzing ratings and awards of the Commission, attention should be directed to the percentage of disability and not to the amount of money which the injured employee is to receive. The schedule provides a standard rating of 30 per cent of disability for the enucleation of one eye. This calls for 120 weeks of disability payments. The amount of the weekly payment varies according to the earnings at time of injury, from a minimum of $9.75 a week to a maximum of $30. Thus, the amount of money received could vary from a minimum of $1,170 to a maximum of $3,600. The important thing, however, is that regardless of the size of payments, they continue for the same length of time, in this instance 120 weeks.

From a procedural point of view, it should be remembered that in a controverted case it is the function of the trial referee to determine the factors of permanent disability that have resulted from the injury, on the basis of the record before him. Once these have been identified to the rating bureau, the factors presented are applied to the schedule and a recommendation is made to the referee. The report of the rating bureau is a recommendation only, and is not binding on the referee or the Commission. For that matter, the Labor Code provides that the schedule itself is but prima facie evidence and hence can be rebutted.

In informal or advisory ratings in which there is no formal proceeding before the Commission, the factors used as a basis for recommendation are extracted from the medical reports.

Now a physician might say, "This is all very well and good, but how do I fit into the picture? Of what use are my reports and how are they applied in a practical way?"

Medical reports are the keystone of awards of the Commission. They are as important to the Commission as a blueprint is to a construction engineer.

Depending upon the particular question involved, the type of report desired may vary. In some cases the physician may be asked whether the alleged incident produced the disability claimed, in other cases, whether the asserted incident alone contributed to the end result, or whether preexisting or coexisting disabilities also contributed.

The author's remarks, however, are directed solely to reports pertaining to the permanent residuals of an accepted injury.

A clinical report may supply answers to etiologic questions and hence assist in identifying or denying liability in the first instance, yet may be of little help in the evaluation of a case from a rating viewpoint. The physician's report on factors of permanent disability is different in scope and character from the report which may have identified injury with employment.

It is essential that rating reports convey a thorough and accurate picture of the disability under consideration. The attending and examining physician therefore takes on a dual role—first, that of directing his professional skill and ability to curing and relieving the effects of injury; and second, that of being in a sense a reporter describing in clear and unmistakable terms the disability present. If a report is not clear it can cause needless misunderstanding and delay.

In a case involving industrial disability, the physician's report may pass through many hands during the adjustment of the case. The claims adjuster and perhaps the carrier's attorney, the applicant and perhaps the applicant's attorney, other examining physicians, as well as the staff of the Commission may all at some time review the report. All of these persons rely upon the reporting physician for an accurate picture of the disability involved in the case, since many of the persons who review the report never see the injured employee.

In an effort to eliminate misunderstanding and to afford physicians an outline of the information desired in the reports for rating, a committee composed of representatives of the California Medical Association and of the Commission, under the able chairmanship of Dr. Packard Thurber, submitted a report for the Standardization of Joint Measurements, some four years ago. The report was adopted by the Commission at that time and has since been published under the title of "Evaluation of Industrial Disability." Use of the procedures described is widespread but not universal, and the Commission earnestly requests that all physicians prepare their reports in accordance with the standardized procedure.

Disabilities such as those of amputation and lim-

ited motion are not difficult to evaluate, and frequently can be related directly to the Schedule. The nondemonstrable factors such as pain, weakness and sensory alterations pose the greatest problem to persons associated with ratings. The courts have found that pain, for instance, is ratable if it contributes to loss of earning power. Therefore if pain is present it must be included as a factor in the rating.

Only by a thorough description of such factors and their effect upon normal activities can the disability be adequately portrayed and rated. It is not sufficient to know that a man may have a slight, moderate or severe pain in a certain portion of the body. It is necessary that the persons determining the rating know the activities that produce the pain, the means necessary for relief, the duration of the pain and the activities that are handicapped or precluded by the pain. In short, it is necessary to know what the injured person can do despite the injury, what he can not do as a result of the injury and the extent to which disability is influenced by nondemonstrable factors.

The framework of the description is not much different from the "who, what, where, when and why" that journalists use in writing newspaper stories. The terminal report should not be directed solely to the site of injury but should include any secondary effects as well. For example, an ankle injury may result in limited ankle motion but also may produce permanent atrophy of the thigh muscles. The entire extremity should therefore be examined and a report made upon it.

With a complete picture the Commission and its staff are in a far better position to gauge the extent of disability and to make the proper and appropriate award. Obtaining the picture depends greatly on full and precise reporting by physicians. With understanding and cooperation, the joint task of physician and Commission will be made easier and the results more satisfactory.

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